

## BACKGROUND

The communication (Notice of Non-Compliant Amendment) from the examiner in the about-identified application, which was mailed on June 1, 2005 (1 June 2005), stated that the amendment to the claims filed on 10 February 2005 does not comply with 37 CFR 1.121(c). The reasons set forth in the communication for noncompliance with 37 CFR 1.121(c) and additional facts are set forth below:

1. Applicants submitted claims to an after final Office action on 23 April 2004.
2. In an Advisory Action, dated 30 June 2004, applicant was advised that the proposed amendments would not be entered because they raised new issues that would require further search and/or consideration.
3. Applicant filed a Request for Continued Examination (RCE) on 23 August 2004, and no claims were submitted on that date.
4. Applicant submitted a claim set on 10 February 2005, and amended the claims as if the previously claim set submitted on 23 April 2004 had been entered.
5. The communication from the examiner mailed June 1, 2005, concluded that applicant is required to amend the claims based on the claims submitted on 9 September 2003, since applicant was advised that the claims submitted on 23 April 2004 would not be entered.

6. However, in the RCE filed on 23 August 2004, applicant checked the box on the RCE form requesting entry of the amendments in the response after final filed on 23 April 2004. Therefore, these amendments should have been entered into the application, making the amendments submitted on 10 February 2005 correctly based thereon.
7. In a telephone interview with Supervisory Patent Examiner (SPE) Chris Lowe on 10 June 2005, the undersigned discussed the communication from the examiner mailed 1 June 2005. During the interview, SPE Chris Lowe reviewed the computer version of the application file, and in particular, reviewed the RCE filed on 23 August 2004, and confirmed that applicant checked the box on the RCE form requesting entry of the amendments in the response after final filed on 23 April 2005.

#### CONCLUSION AND REQUESTED RELIEF

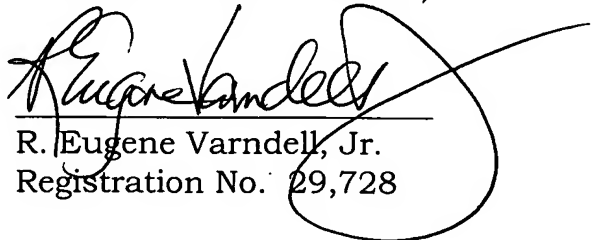
For the above reasons, applicant respectfully submits that the claim amendments set forth in the Voluntary Amendment filed on 10 February 2005 comply with 37 CFR § 1.121 and are to be entered into the application in their present format. Namely, entry of the amendment to the claims in the response after final filed 23 April 2004 were requested in the RCE filed on 23 August 2004 and must be entered into the application. Therefore, the amendments to the claims submitted on 10 February 2005 are based correctly on entry of the

amendment to the claims in the response after final filed on 23 April 2004, and thus, comply with 37 CFR § 1.121.

Therefore, applicant respectfully submits that the amendments set forth in the Voluntary Amendment filed on 10 February 2005 comply with 37 CFR § 1.121, and correctly should be entered into the application at this time. In the telephone interview with SPE Chris Lowe, he agreed that the amendments set forth in the Voluntary Amendment filed on 10 February 2005 comply with 37 CFR § 1.121, and it appeared that that these amendments should be entered into the application.

If there are any questions in connection with this matter, it is respectfully requested that the undersigned be telephoned at the below listed number to resolve any outstanding issues. In the event that this paper or the paper(s) filed herewith is (are) not timely filed, applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge the fee therefor, as well as any deficiency in the payment of the required fee(s) or credit any overpayment, to our deposit account No. 22-0256.

Respectfully submitted,  
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